

North Carolina Oceanfront Municipalities:

The Emerald Isle Board of Commissioners unanimously approved the attached Resolution Requesting State Legislation to Clarify Municipal Authority on the State's Ocean Beaches at its meeting on December 11, 2012. The Resolution includes suggested bill language for introduction by Representative Pat McElraft in the 2013 session of the NC General Assembly. We are asking that your governing body consider an identical or similar resolution at an upcoming meeting.

Although private property often extends to the mean high water mark, NCGS 77-20 establishes public trust rights on the "ocean beaches" along the Atlantic Ocean in North Carolina. NCGS 77-20 defines the "ocean beaches" as the typical flat, dry sand beach between the dunes and the water, and the public has historically enjoyed free and unimpaired access to these areas. In practice, these public trust areas have been and continue to be generally managed in a manner similar to public parks.

Emerald Isle and all other NC oceanfront municipalities have historically and continue to regulate activities in the public trust areas of the ocean beaches in order to protect and promote the public's health, safety, and welfare. The range of activities historically and currently regulated by the 21 NC oceanfront municipalities includes, among others: public access, beach driving, beach horseback riding, dune protection, leash laws, prohibition of litter, prohibition of fires, prohibition of camping, unattended beach equipment, preservation of adequate emergency and public service vehicle travel ways, removal of structures, smoking, prevention of dangerous holes in the sand, and environmental habitat protection. Not all oceanfront municipalities regulate the same activities or in the same manner, however, several municipalities regulate each of the activities noted.

A recent Court of Appeals decision involving the Town of Nags Head has resulted in questions about the authority of NC oceanfront municipalities to regulate activities in the public trust areas, and there have been suggestions that only the State of NC has such authority. The approval of clarifying legislation will be helpful to NC oceanfront municipalities, the general public, and oceanfront property owners, and we encourage your municipality to support this effort. Please forward a copy of your approved resolution to my attention after consideration by your governing body, and I will forward all resolutions to Representative Pat McElraft.

Please feel free to contact me at the telephone numbers below if I can be helpful on this issue. Your municipal attorney may also contact Emerald Isle Town Attorney Richard Stanley at 252-728-7200 to discuss this issue.

Thank you for your consideration,

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